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**Book review of Ida Wendt, EU Competition Law and Liberal Professions: an Uneasy Relationship? Leiden: Brill Academic Publishers, 2012**

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Ida E. Wendt, *EU Competition Law and Liberal Professions: an Uneasy Relationship?* Leiden: Brill Academic Publishers, 2012. 618 pages. ISBN: 978-90-04-21449-1. EUR 188.

When reviewing this book I was wondering where the time had gone. Wendt initially wrote this book as a PhD thesis (defended in Maastricht, in 2009). Shortly before she started her research, the judgment in *Wouters* (Case C-309/99) was all new, and the Commission has just triggered a review on the application of the competition rules to the liberal professions. In the meantime, this topic is no longer at the centre stage of EU competition law. Chasing everyday reality, the focus is now on technology markets and big pharma. In a way, this shows how fleeting the attention may be that specific emanations of competition law receive. This must have an implication for the scholars involved in EU competition law, as such applications invariably create new questions and challenge vested ideas and the doctrinal integrity of EU competition law. Today we could envisage a book that tries to answer the question whether there exists an uneasy relationship between EU competition law and big ICT firms or the pharmaceutical industry.

This book, somewhat dated as it may be (the most recent case law cited dates from March 2011), still has its value. It provides a thoroughly reasoned analysis of the application of

competition law to the (self-)regulation of the liberal professions in a way that not only does justice to the scholars of competition law, but also satisfies the expectations of the members of those professions. It is research at the crossroads of several debates. Wendt addresses issues relating to the division of competences between the EU, the Member States, the regulated entities and consumers, the (perceived) dichotomy between economic and non-economic objectives and, ultimately, the role of court-made law in a system based on the rule of law. These issues also arise in relation to the application of EU competition law to – again something of the past – the energy sector, and the current application to the pharmaceutical industry or ICT firms.

In relation to the liberal professions, the judgment in *Wouters* plays a central role. It is not only analysed in relation to the question of the relation between EU competition law and the liberal professions, it is also analysed as an attempt by the ECJ to engage in law making in this political, economic and societal minefield. In a minefield, one had better tread lightly, and this is exactly what the Court appears to have done in *Wouters*. The author, however, fortunately feels no need to tread lightly, and suggests the application of EU competition law. At the same time, democratically legitimized rules should escape competition law scrutiny.

With this in mind, Wendt's analysis of *Wouters* is clear: she characterizes it as a *contra legem* solution (p. 303). Indeed, *Wouters* defies existing legal categories, making it a self-contained addition to the doctrine on Article 101 TFEU. The problem, however, is that *Wouters* could have been a one-off. A simple docket-control mechanism employed by a Court that was faced with a Commission exemption monopoly and a desire not to be bothered with myriad similar cases. However, anyone who has studied the aftermath of *Keck* knows the fate of such attempts by the Court and indeed the *Wouters*-exception has consistently recurred in the jurisprudence (*Meca-Medina* (Case C-519/04 P), cited in the book, *OTOC* (Case C-1/12) and *CNG* (Case C-136/12), both more recently). So *Wouters* was meant to stay, even after the Commission lost its monopoly on the application of Article 101(3) TFEU and after the Court itself had declared that provision to be directly effective (Case C-439/09, *Pierre Fabre*).

How then are we to understand something like *Wouters* and what does it tell us about future hard cases that will invariably present themselves before the ECJ? To characterize something as *contra legem* because it doesn't fit into our understanding of the law equates this concept to undoctinal. Yet another term is coined by General Court Judge Marc van der Woude in his preface when he recalls that this judgment had been called "opportunistic". Far worse is the characterization of this judgment as "surprising".

Competition law and the effects of its application to any sector in which there are market failures are far too important to be left to "surprising" judgments. In fact, studies have shown that the effect of the application of unclear competition law is the creation of excessive red tape, which can only be to the detriment of the very efficiency and consumer welfare it purports to protect. In this regard it is good to see that Wendt's analysis of *Wouters* as *contra legem* is just the starting point for the construction of a model that makes sense of it all and reduces the element of surprise in the application of the law. In this regard, it could serve as an example for current or future research on the (un)easiness of the applications of competition law to other sectors and economic activities.

At times, the book feels a bit "over structured" with paragraph headings to six levels; another minor quibble concerns the (few) typos and grammatical errors in the text. On a similar note, some pages consist of footnotes, begging the question what could possibly be so extraordinary that it did not warrant discussion in the main text but still needed mentioning in small print? Apart from that, the book is well-researched, contains a wealth of references to relevant acts and legislation in various Member States and provides a clear and accessible analysis and review of the law. As an account of a scholar making sense of undoctinal jurisprudence, it is a timeless contribution to legal research.

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